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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 _____
11 **Eric G. Bjotvedt**, an
individual;

12)
13)
14)
15)
16)
17)
18)
19)
20)
Plaintiff,

v.

11 **American Payment Systems,**
12 **Inc.**, a Connecticut
13 corporation; and
14 **Absolute Account**
15 **Resolutions, LLC**, a
16 Pennsylvania limited
17 liability company;
18
19 Defendants.

No.

COMPLAINT

(Jury Trial Demanded)

21 Plaintiff alleges as follows:

22 **I. Preliminary Statement**

23 1. Plaintiff brings this action for damages based upon
24 Defendants' violations of the Fair Debt Collection
25 Practices Act, 15 U.S.C. §§ 1692 et seq.

(hereinafter "FDCPA"). In the course of attempting to collect a debt allegedly owed by Plaintiff, Defendants engaged in deceptive, unfair and/or abusive debt collection practices in violation of the FDCPA. Plaintiff seeks to recover actual damages, and statutory damages, as well as reasonable attorney's fees and costs.

II. Statutory Structure of FDCPA

2. Congress passed the FDCPA to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent state action to protect consumers against debt collection abuses. FDCPA § 1692.
3. The FDCPA is designed to protect consumers who have been victimized by unscrupulous debt collectors regardless of whether a valid debt exists. Baker v. G.C. Services Corp., 677 F.2d 775, 777 (9th Cir. 1982).
4. The FDCPA defines a "consumer" as any natural person obligated or allegedly obligated to pay any debt. FDCPA § 1692a(3).
5. The FDCPA defines "debt" as any obligation or alleged obligation of a consumer to pay money

IV. Parties

9. Plaintiff is an individual and resident of Maricopa County, Arizona.

10. Plaintiff is allegedly obligated to pay a consumer debt.

11. Plaintiff is a "consumer" as defined by FDCPA § 1692a(3).

12. Defendant American Payment Systems, Inc. (hereinafter "APS") is a Connecticut corporation.

13. APS regularly collects or attempts to collect debts owed or asserted to be owed or due another.

14. In the alternative, APS regularly collects or attempts to collect debts which it has purchased after default.

15. APS is a "debt collector" as defined by FDCPA § 1692a(6).

16. Defendant Absolute Account Resolutions, LLC (hereinafter "AAR") is a Pennsylvania limited liability company with its principal place of business at 921 Oak Street, Scranton, Pennsylvania.

17. AAR regularly collects or attempts to collect debts owed or asserted to be owed or due another.

18. In the alternative, AAR regularly collects or attempts to collect debts which it has purchased after default.

1 19. AAR is a "debt collector" as defined by FDCPA §
2 1692a(6).

3 **V. Factual Allegations**

4 20. In or about June 1998, Plaintiff opened and used a
5 credit card issued by Fleet Bank.

6 21. Plaintiff used the credit card for personal, family,
7 and household purposes.

8 22. Plaintiff fell behind in his payments on the Fleet
9 card, and ultimately defaulted no later than
10 November 2000.

11 23. Fleet was subsequently purchased by Bank of America.

12 **a. AMERICAN PAYMENT SYSTEMS, INC.**

13 24. Upon information and belief, the Fleet debt was
14 later sold or assigned to APS for collection
15 purposes.

16 25. In or about July 2008, APS mailed or caused to be
17 mailed a collection letter to Plaintiff concerning
18 the Fleet debt. A copy of this letter is attached
19 hereto as Exhibit A and incorporated herein.

20 26. Exhibit A was received by Plaintiff on August 1,
21 2008.

22 27. Exhibit A was addressed as follows:

23 ERIC G. BJOTVEDT
24 C/O VMD GEORGE BJOTVEDT
1300 N. GOOSE FLAT WAY
25 PRESCOTT VALLEY, AZ 86314

1 28. Exhibit A threatens Plaintiff with legal action on
2 the Fleet debt.

3 29. Exhibit A implies that legal action has been filed
4 against Plaintiff in Maricopa County by the use of
5 the line "Case #: C-89882 County: *MARICOPA CNTY.*"

6 30. In or about July 2008, APS mailed or caused to be
7 mailed a collection letter to Plaintiff concerning
8 the Fleet debt. A copy of this letter is attached
9 hereto as Exhibit B and incorporated herein.

10 31. Exhibit B was received by Plaintiff on August 8,
11 2008.

12 32. Exhibit B was addressed as follows:

13 ERIC G. BJOTVEDT
14 C/O AIYSHA SHAZ BJOTVEDT
15 27835 N. 47TH ST
CAVE CREEK, AZ 85331-3615

16 33. Exhibit B implies that legal action has been filed
17 against Plaintiff in Maricopa County by the use of
18 the line "Case #: C-89882 County: *MARICOPA CNTY.*"

19 34. Exhibit B threatens Plaintiff with legal action on
20 the Fleet debt.

21 35. In or about July or August 2008, APS mailed or
22 caused to be mailed a collection letter to Plaintiff
23 concerning the Fleet debt. A copy of this letter is
24 attached hereto as Exhibit C and incorporated
25 herein.

1 36. Exhibit C was received by Plaintiff in August 2008.

2 37. Exhibit C was addressed as follows:

3 ERIC G. BJOTVEDT
4 C/O BRUCE B BJOTVEDT
5 7261 N VIA NUEVA
6 SCOTTSDALE, AZ 85258

7 38. Exhibit C implies that legal action has been filed
8 against Plaintiff in Maricopa County by the use of
9 the line "Case #: C-89882 County: *MARICOPA CNTY.*"

10 39. Exhibit C threatens Plaintiff with legal action on
11 the Fleet debt.

12 40. At the time Exhibits A, B and C were sent to
13 Plaintiff, no legal action had been filed on the
14 Fleet debt.

15 41. As of the date of this complaint, no legal action
16 has been brought against Plaintiff on the Fleet
17 debt.

18 42. At the time Exhibits A, B and C were sent, the Fleet
19 debt was stale and beyond the applicable statute of
20 limitations.

21 43. APS's falsely represented the status of the debt in
22 its letters attached as Exhibits A, B and C.

23 44. APS sent Exhibits A, B and C in care of a third
24 parties in order to disclose to third parties that
25 Plaintiff was indebted to APS, and to intimidate,
humiliate, and or embarrass Plaintiff.

1 45. In August 2008, Plaintiff received a phone call from
2 APS demanding payment on the Fleet debt,

3 46. During this phone call, APS stated that if payment
4 of the Fleet debt was not made, then a case would be
5 filed in Maricopa County and gave Plaintiff a case
6 number.

7 47. Immediately after the call, Plaintiff searched the
8 Maricopa County Court records to see if a suit had
9 been filed.

10 48. Upon learning that no suit had been filed against
11 him by APS, Plaintiff refused to pay the debt.

12 **b. ABSOLUTE ACCOUNT RESOLUTIONS, LLC**

13 49. Sometime on or before February 27, 2009, the Fleet
14 debt was assigned or sold to AAR for collection
15 purposes.

16 50. On or about February 27, 2009, AAR mailed or caused
17 to be mailed to Plaintiff a collection letter
18 concerning the Fleet debt. A copy of this letter is
19 attached as Exhibit D and incorporated herein.

20 51. Exhibit D was the initial communication Plaintiff
21 received from AAR.

22 52. Exhibit D did not contain the verification/
23 validation notice as required by 15 U.S.C. §1692g.

24 53. On or about February 27, 2009, AAR faxed to
25 Plaintiff a collection letter concerning the Fleet

1 debt. A copy of this letter is attached as Exhibit
2 E and incorporated herein.

3 54. Exhibit E states in part that if Plaintiff paid the
4 settlement demand of \$8,000.00 by March 17, 2009,
5 then AAR would "mark our records accordingly and
6 your credit bureau report will be amended to reflect
7 this settled in full account."

8 55. On or about March 2, 2009, AAR faxed to Plaintiff a
9 collection letter concerning the Fleet debt. A copy
10 of this letter is attached as Exhibit F and
11 incorporated herein.

12 56. Exhibit F again states in part that if Plaintiff
13 paid the settlement demand of \$6,500.00 by March 17,
14 2009, then AAR would "mark our records accordingly
15 and your credit bureau report will be amended to
16 reflect this settled in full account."

17 57. The statements concerning credit reporting contained
18 in Exhibits E and F were intended to suggest to
19 Plaintiff that the Fleet debt was reporting on his
20 credit bureau report(s).

21 58. Upon information and belief, as of February 27,
22 2009, AAR was not reporting the Fleet debt to any
23 consumer reporting agency to reflect on Plaintiff's
24 credit bureau report(s).

25 59. As of February 27, 2009, the Fleet debt was too old

1 to report to any consumer reporting agency or
2 reflect on Plaintiff's credit bureau report(s). See
3 Fair Credit Reporting Act, 15 U.S.C. §1681c(a)(4).

4 60. As a result of Defendants' actions as outlined
5 above, Plaintiff has suffered damages including, but
6 not limited to, embarrassment, humiliation, and
7 other emotional distress.

8 61. Defendants' actions taken here were intentional,
9 willful, and in gross or reckless disregard of
10 Plaintiff's rights and part of its persistent and
11 routine practice of debt collection.

12 62. In the alternative, Defendants' actions were
13 negligent.

14 **VI. Causes of Action**

15 **a. Fair Debt Collection Practices Act**

16 63. Plaintiff repeats, realleges, and incorporates by
17 reference the foregoing paragraphs.

18 64. Defendant APS's violations of the FDCPA include, but
19 are not limited to, 15 U.S.C. §§ 1692c, 1692c(b),
20 1692e, 1692e(2)(A), 1692e(5), 1692e(10), and 1692g.

21 65. Defendant AAR's violations of the FDCPA include, but
22 are not limited to, 15 U.S.C. §§ 1692e, 1692e(2)(A),
23 1692e(5), 1692e(8), 1692e(10), and 1692g.

24 66. As a direct result and proximate cause of
25 Defendants' actions in violation of the FDCPA,

1 Plaintiff has suffered actual damages.

2 **VII. Demand for Jury Trial**

3 Plaintiff hereby demands a jury trial on all issues
4 so triable.

5 **VIII. Prayer for Relief**

6 WHEREFORE, Plaintiff requests that judgment be
7 entered against each Defendant for:

- 8 a) Statutory damages of \$1,000 pursuant to \$1692k;
9 b) Actual damages in an amount to be determined by
10 trial;
11 c) Costs and reasonable attorney's fees pursuant to
12 \$1692k; and
13 d) Such other relief as may be just and proper.
14

15 RESPECTFULLY SUBMITTED: June 19, 2009 .
16

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